

REMARKS

Entry of this preliminary amendment in this application, and favorable consideration of the elected claims in this application, are respectfully requested.

Claims 1 through 38 remain in this case. Claims 1, 3, 5, 6, 8, 11, 13, 15, 16, 18, 21 through 24, 27, 29 through 33, 37, and 38 are amended.

In the Office Action, the Examiner required election of a patentably distinct species. Applicants hereby provisionally elect Species II, including independent claim 27 and its dependent claims, without traverse,¹ for prosecution in the event that a generic claim is not allowed.

Claims 1, 3, 5, 6, 8, 11, 13, 15, 16, 18, 21 through 24, 27, 29 through 33, 37, and 38 are amended for clarity. Applicants submit that the amendment presented to these claims is in no way narrowing nor is presented for any reason related to patentability.² No new matter is presented.

¹ Applicants wish to point out, however, that the identification of species made by the Examiner in the Office Action is not entirely proper. According to the practice of the Patent and Trademark Office, species refer to different embodiments of the invention disclosed in the specification, and not to groups of claims. MPEP §806.04(e). The Examiner defined the species in this Office Action by referring to claim groups.

² See *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 535 U.S. 722, 62 USPQ2d 1705 (2002), *on remand*, 304 F.3d 1289, 64 USPQ2d 1698 (Fed. Cir. 2002).

Entry of this preliminary amendment, and favorable consideration of this application based on the provisional species election made above, are respectfully requested.

Respectfully submitted,

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